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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

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Amendment of Part 90 of the
Commission's Rules To Provide
for the Use of the 220-222 MHz Band
by the Private Land Mobile
Radio Service

PR Docket No. 89-552
RM-8506

Implementation of Sections 3(n) and 332
of the Communications Act

GN Docket No. 93-252

Regulatory Treatment of Mobile Services

Implementation of Section 309(j) of the
Communications Act -- Competitive
Bidding, 220-222 MHz

PP Docket No. 93-253

Comments

Echo Group L.P. ("Echo Group"), by its attorneys, hereby submits these comments in connection with the Federal Communications Commission's (the "Commission") *Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking* ("Third NPRM") in the above-captioned proceeding.¹

¹ *Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking*, PR Dkt. No. 89-552 (RM-8506), GN Dkt. No. 93-252 and PP Dkt. No. 93-253, FCC 95-312 (rel. Aug. 28, 1995).

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The Commission's *Third NPRM* is seeking comment on, among other things, three possible methods of processing the 33 pending applications for four nationwide, non-commercial licenses in the 220-222 MHz bandwidth.² Specifically, the Commission proposed (1) to auction the nationwide, non-commercial licenses to the highest bidder, (2) to conduct lotteries to award the licenses from among the 33 pending applications, or (3) to grant authorizations among the 33 applicants through comparative hearings. Under its proposed auction scenario, the Commission would return the applications and the appropriate filing fees to the 33 applicants and open a new filing window for participants in the auction.

Echo Group submits that applicants should be afforded the option of withdrawing their applications and recouping their filing fees regardless of whether the Commission assigns the 220-222 MHz licenses by auction, lottery or comparative hearing. The Commission's extended delay in assigning the licenses, combined with the ongoing uncertainty surrounding the application process, make it either impossible or undesirable for applicants such as Echo Group to continue with the application process.

The applications for the noncommercial 220-222 MHz licenses were originally filed with the Commission in May of 1991.³ One year later, the Commission

² Echo Group filed applications for two of these license.

³ *Third NPRM* at ¶ 28.

significantly modified the entry criteria and financial requirements for the applicants.⁴ Thus, it has been over four years since the applications for non-commercial, nationwide 220 MHz licenses were filed with the Commission and three years since the rules were amended. During this time period, financial and business conditions have changed dramatically for some of the applicants, with Echo Group being a strong case in point.⁵ Further, any issuance of licenses appears destined for delay until at least some time in 1996. In order to accommodate those applicants that have undergone unforeseen changed circumstances during the extremely protracted application process, the Commission should return the applications and the appropriate filing fees.

Moreover, in no event should applicants be forced to participate in an application process that is different from that in existence when they filed their applications. When the Commission significantly altered the construction and operational requirements for nationwide, noncommercial 220 MHz licenses in July of 1992, it recognized that certain applicants would no longer be able to satisfy or interested in

⁴ See *Memorandum Opinion and Order*, PR Dkt. No. 89-552, 7 FCC Rcd 4484 (1992). The Commission received a number of petitions challenging its modifications and, as a result, it has yet to require the applicants to amend their applications.

⁵ Recently, Mr. Howard S. Klotz, the principal and controlling individual of Echo Group, passed away

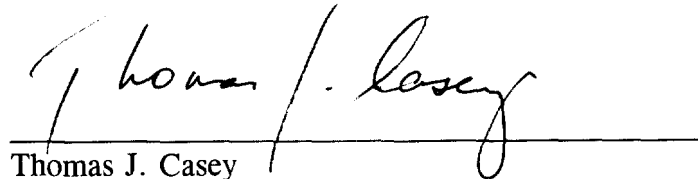
satisfying its licensing prerequisites.⁶ Therefore, the Commission permitted applicants to withdraw their applications and provided for the refund of their filing fees.⁷ The same rationale supports the availability of an opt-out and refund provision at this point in the application process.

For the foregoing reasons, the Commission should allow Echo Group and other applicants for nationwide, non-commercial 220 MHz licenses to withdraw their applications and recoup their filing fees regardless of the methodology selected for awarding such licenses.

Respectfully Submitted

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⁶ *Memorandum Opinion and Order*, 7 FCC Rcd at 4489 n.66.

⁷ *Id.*